

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE AGRICULTURE AND WATER RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 312

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO WATER; PROVIDING FOR A STRATEGIC WATER RESERVE;
PROVIDING FOR ADDITIONAL POWERS AND DUTIES OF THE INTERSTATE
STREAM COMMISSION; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX
BONDS FOR THE ACQUISITION OF WATER, WATER RIGHTS AND WATER
STORAGE FOR THE STRATEGIC WATER RESERVE; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 72, Article 14 NMSA
1978 is enacted to read:

"~~[NEW MATERIAL]~~ INTERSTATE STREAM COMMISSION--ADDITIONAL
POWERS--STRATEGIC WATER RESERVE.--

A. The interstate stream commission shall establish
a strategic water reserve and may purchase or lease from
willing sellers or lessors or receive through donation surface

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1 water or water rights or storage rights to comprise the
2 reserve. The commission may also purchase or lease from
3 willing sellers or lessors or receive by donation underground
4 water or water rights for the strategic water reserve for
5 cessation of pumping or limited short-term stream augmentation.
6 At no time shall the use of water or water rights held by the
7 strategic water reserve result in an increase in net depletions
8 in any basin. The commission shall pay no more than the
9 appraised market value to purchase or lease water or water
10 rights and storage rights for the strategic water reserve. The
11 commission may accept money or grants from federal or other
12 governmental entities or other persons to purchase or lease
13 water or water rights for the strategic water reserve and to
14 pay administrative costs. The commission shall not acquire
15 water or water rights that are served by or owned by an acequia
16 or community ditch established pursuant to Chapter 73, Articles
17 2 and 3 NMSA 1978 for inclusion in the strategic water reserve.
18 The commission shall not acquire water or water rights that are
19 served by an irrigation district established pursuant to
20 Chapter 73, Article 10 NMSA 1978, except through contractual
21 arrangement with the district board of directors or as a
22 special water users association established pursuant to Chapter
23 73, Article 10 NMSA 1978, but nothing herein shall be construed
24 to prohibit or limit the commission's acquisition of water
25 rights necessary to complete full implementation of the Pecos

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1 river Carlsbad irrigation district settlement. The commission
2 shall acquire only water rights recognized by the state
3 engineer to have sufficient seniority and consistent, historic
4 beneficial use to effectively contribute to the purpose of the
5 strategic water reserve. The commission shall not acquire
6 water or water rights for the strategic water reserve by
7 condemnation. Water in the strategic water reserve shall not
8 be subject to forfeiture pursuant to Chapter 72 NMSA 1978.
9 Water or water rights shall only be acquired with the explicit
10 approval of the commission.

11 B. Water and water rights in the strategic water
12 reserve shall be used to:

- 13 (1) assist the state in complying with
- 14 interstate stream compacts and court decrees; or
- 15 (2) assist the state and water users in
- 16 complying with the federal Endangered Species Act of 1973 as
- 17 part of a collaboratively developed compliance program
- 18 involving state and federal agencies and water users or in a
- 19 program intended to avoid additional listings of species. Use
- 20 of the strategic water reserve pursuant to this paragraph shall
- 21 be limited to aquatic or obligate riparian species.

22 C. The interstate stream commission shall develop
23 river reach or ground water basin priorities for the
24 acquisition of water or water rights and storage rights for the
25 strategic water reserve in consultation with the New Mexico

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1 interstate stream compact commissioners, the office of the
2 state engineer and the attorney general's office. For each
3 river reach or ground water basin, additional prioritization
4 shall be developed in coordination with the governing bodies of
5 the following organizations within the affected river reach or
6 ground water basin:

- 7 (1) Indian nations, tribes and pueblos;
- 8 (2) boards of county commissioners;
- 9 (3) special districts established pursuant to
10 Chapter 73 NMSA 1978;
- 11 (4) soil and water conservation districts;
- 12 (5) water authorities; and
- 13 (6) water planning regions.

14 D. The interstate stream commission may sell or
15 lease water or water rights from the strategic water reserve at
16 no less than the appraised market value. The commission may
17 sell water rights only if the rights are no longer necessary
18 for the purposes for which they were acquired for the reserve;
19 provided that water rights in the reserve shall not be sold to
20 the United States. Pursuant to a sale of water rights from the
21 strategic water reserve by the interstate stream commission,
22 the commission shall first make the offer of sale for the
23 original purpose of use. Proceeds of any sale are appropriated
24 to the office of the state engineer to adjudicate water rights.
25 Proceeds of any leases are appropriated to the interstate

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1 stream commission for carrying out the purposes of the
2 strategic water reserve.

3 E. Water or water rights acquired for the strategic
4 water reserve or water or water rights sold or leased from the
5 reserve shall remain in their river reach or ground water basin
6 of origin.

7 F. Transactions with members of an irrigation or
8 conservancy district established pursuant to Chapter 73 NMSA
9 1978 shall provide for the strategic water reserve to pay the
10 annual assessment to the district that would accrue to the
11 district absent the transaction.

12 G. Cumulative impacts of the strategic water
13 reserve acquisitions and uses shall not adversely affect
14 existing water users or delivery systems.

15 H. The interstate stream commission shall adopt
16 rules consistent with the terms of this section, including
17 rules to ensure:

18 (1) that water and water rights acquired for
19 the strategic water reserve are used only for the purposes of
20 the reserve; and

21 (2) adequate public notice in each affected
22 area for the acquisition or disposal of water rights.

23 I. The interstate stream commission shall annually
24 report to the appropriate committee of the legislature on the
25 status of the strategic water reserve."

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1 Section 2. A new section of the Severance Tax Bonding Act
2 is enacted to read:

3 "[NEW MATERIAL] BONDING CAPACITY--AUTHORIZING ISSUANCE OF
4 SEVERANCE TAX BONDS FOR THE STRATEGIC WATER RESERVE.--

5 A. By January 15 of each year, the board of finance
6 division of the department of finance and administration shall
7 estimate the amount of bonding capacity available for severance
8 tax bonds to be authorized by the legislature. The division
9 shall authorize three percent of the estimated bonding capacity
10 each year beginning in fiscal year 2005 and ending in fiscal
11 year 2025, and the legislature authorizes the state board of
12 finance to issue severance tax bonds in the annually deducted
13 amount for use by the interstate stream commission for the
14 acquisition and leasing of water, water rights and storage
15 rights for the strategic water reserve and its administrative
16 costs.

17 B. The interstate stream commission shall certify
18 to the state board of finance the need for issuance of bonds
19 for acquisition of water, water rights and storage rights for
20 the strategic water reserve. The state board of finance may
21 issue and sell the bonds in the same manner as other severance
22 tax bonds in an amount not to exceed the authorized amount
23 provided for in this section. If necessary, the state board of
24 finance shall take the appropriate steps to comply with the
25 federal Internal Revenue Code of 1986. Proceeds from the sale

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1 of the bonds are appropriated to the interstate stream
2 commission to acquire and lease water, water rights and storage
3 rights for the strategic water reserve and its administrative
4 costs.

5 C. Any unexpended balance from proceeds of
6 severance tax bonds issued for the strategic water reserve
7 shall revert to the severance tax bonding fund as of the first
8 day after the end of the tenth fiscal year following the fiscal
9 year in which the severance tax bonds were issued, after
10 reserving for unpaid costs and expenses covered by binding
11 written obligations to third parties."

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